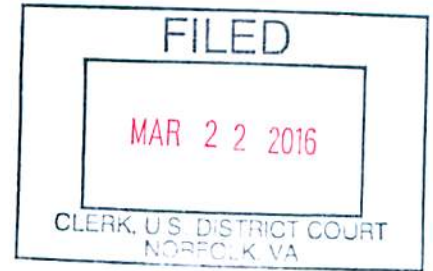


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



DEREK DESHAUD FAULCON,

Petitioner,

v.

Civil Case No. 14cv433

Criminal No. 2:13cr55

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM ORDER

This matter is before the Court on the remaining claim for ineffective assistance of counsel presented in Derek Deshaud Faulcon's ("Petitioner") Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion"). ECF No. 39.

Petitioner's § 2255 Motion raised two claims of ineffective assistance of counsel, regarding counsel's alleged misrepresentation and failure to file an appeal, and a claim that the Government breached its plea agreement with Petitioner. On January 6, 2016, by Opinion and Order, the Court dismissed all claims except Petitioner's claim for ineffective assistance of counsel for failure to file a notice of appeal. ECF No. 62. In that Order, the Court granted Petitioner thirty (30) days to develop the factual basis for his claim by filing a sworn statement that he unequivocally asked his attorney, Mr. Hagans,

to file a timely notice of appeal and to describe the facts and circumstances of such request.

On February 3, 2016, Petitioner filed two Affidavits, one written by Petitioner and one written by his mother, Vernell Faulcon, in response to the Court's Order. ECF No. 63. In his written affidavit, Petitioner states that he "specifically told [his] attorney (Mr. Hagans) that [he] was not happy with this sentence and [he] wanted to appeal it." Sworn Aff. of Truth for Derek Deshaud Faulcon, 1, ECF No. 63-1. Petitioner also states that "[o]n that same day, [Petitioner] called [Mr. Hagans'] office later on, but could not reach him." Id. at 2. Petitioner further states that he continued to attempt to contact Mr. Hagans, and Petitioner's mother attempted to contact Mr. Hagans, but Mr. Hagans "did not file the notice of appeal as [Petitioner] specifically requested in order to preserve [his] appellate rights, nor did he make himself available to be reached." Id.

Rule 7(c) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires a federal judge to give the party against whom the additional materials are offered an opportunity to admit or deny their correctness. R. Governing § 2255 Proceedings in U.S. Dist. Cts. 7(c). Here, as the Court has ordered, and Petitioner has provided, additional affidavits regarding his claim that counsel failed to file a

notice of appeal, the Court finds that a written response from the United States Attorney is appropriate.

Accordingly, the United States Attorney is ORDERED to file a response to Petitioner's Response to the Order of the Court to Unequivocally State His Position, ECF No. 63, regarding Petitioner's claim that counsel failed to file a notice of appeal within forty-five (45) days from the date of entry of this Order. Upon the filing of the Government's response, this Court will enter any further order as may be appropriate.

IT IS SO ORDERED.

/s/ 

Mark S. Davis

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 22, 2016